IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13162 of 2007
With
SPECIAL CIVIL APPLICATION No. 21147 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTILAL ASHABHAI PATEL EX.HEAD CLERK - ET
Versus
UNION OF INDIA THRO' GENERAL MANAGER AND OTHERS

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Appearance :
MR KK SHAH for the Petitioner(s) : 1,
MS MEGHA JANI for Respondent(s) : 1 - 2.
MS AVANI S MEHTA for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)

1. These two petitions are filed against judgment and order dated 08.12.2004 passed by the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in Original Application No.742 of 2001.

1.1 The Tribunal was pleased to allow the Original Application and quash and set aside the order of revisional authority and the General Manager passed in appeal. The Tribunal was pleased to hold that the order passed by the first appellate authority shall stand. The Original Application was disposed of with the aforesaid directions.

2. The Union of India, through the General Manager, Western Railways, preferred Special Civil Application No.21147 of 2005 praying that the order passed by the Central Administrative Tribunal dated 08.12.2004 in Original Application No.742 of 2001 be quashed and set aside. As against that, Special Civil Application No.13162 of 2007 was filed by the original petitioner (before the Central Administrative Tribunal, Ahmedabad) praying that an appropriate writ, order and/or direction be issued holding that the Tribunal has failed in exercising its jurisdiction by not granting the consequential reliefs as prayed for in Original Application No.742 of 2001 of continuity of service with seniority, promotion and back

wages and other retirement benefits like pension, gratuity, interest on P.F. And other dues with interest at the rate of 15%.

3. The facts of the case are:-

3.1 The petitioner (respondent in Special Civil Application No.21147 of 2005) was employed as Head Clerk E.T. Section in the DRM Office, Baroda on 26.01.1990. It was alleged against the petitioner that one Shri C.S.Nair, retired CCG Kankaria had sent an application addressed to Senior DPO/BRC with a request for sanctioning his transfer/packing allowance on account of his having shifted to a new home after his retirement. A communication was sent to Shri Nair to intimate the actual distance from his old house to his new house. In response to which, by letter dated 06.01.1990, Shri Nair informed that the actual distance between his old house and new house is more than 15 kms. Thereafter, Shri Nair did not receive any reply from the office, hence he personally visited the Divisional Office on 24.01.1990 and met the petitioner as he was dealing with the said work. It is also alleged that the petitioner suggested Shri Nair to move another application showing the distance between the new house and the old house as more than 20 kms. to entitle him to take the benefit of transfer – T.A. and asked for illegal gratification to the tune of Rs.775/-

3.2 It is alleged that Shri Nair paid Rs.25 on that day and the balance of Rs.775/- was to be paid to the petitioner, as decided at the time of arrival of Howrah Express at Baroda. It is also alleged

that Shri Nair paid Rs.775/- and the petitioner was caught with the currency notes by the authorities.

3.3 A charge sheet was served to the petitioner containing a charge to the effect that:

> "Shri Jayantilal A.Patel – petitioner – Head Clerk E.T. Section DRM's office, Baroda accepted Rs.775/- on 26.01.1990 from one Shri C.S.Nair, retired CGC Kankaria as illegal gratification for passing his transfer/packing allowance."

3.4 One Shri J.N.Hazari was appointed as Inquiry Officer, who submitted his report No.E.O. (HQ)/20/90 dated 26.10.1990. On the basis of the report of the Inquiry Officer, disciplinary authority imposed penalty of removal from service with immediate effect vide order NIP No.E (D.N.G.)/161/308/6514/7 dated 27.02.1991.

3.5 The petitioner, being aggrieved by the above order, preferred an appeal on 28.03.2001 before the ADRM (1)/BRC. The appellate authority came to the conclusion that punishment was too harsh and after considering the merits of the case, reduced the penalty of 'removal from service' to that of 'reduction in next lower grade of Senior Clerk scale of 1200-2040 at pay and 1660 against Rs.1750/- without future effect for two years and recommended transfer to some other section'.

3.6 The revisional authority, in exercise of powers conferred under Rule 25 of R.S. (D&A) Rule 1968, called for the record of the

case for review on the ground that the facts have not been properly appreciated by the appellate authority. The revisional authority, after considering the facts of the case and after taking into consideration the written arguments submitted by the petitioner, set aside the order passed by the appellate authority by order dated 28.05.1991 and confirmed order dated 27.02.1991 passed by the disciplinary authority of removal from service with immediate effect.

3.7 Against the order passed by the revisional authority, the petitioner preferred Original Application No.24 of 1992 before the Central Administrative Tribunal, Ahmedabad. The same was disposed by the Tribunal on the ground of alternative remedy by order dated 19.04.2000.

3.8 The petitioner preferred an appeal before the General Manager on 08.05.2000. The decision of the General Manager on the said appeal dated 06.11.2000 was communicated to the DRM by communication dated 10.11.2000. The General Manager was pleased to uphold the penalty of removal.

3.9 Being aggrieved by that, the petitioner preferred Original Application No.742 of 2001 before the Central Administrative Tribunal, Ahmedabad. The Tribunal, after taking into consideration all the aspects of the matter observed as under:

> “There is no detailed discussion in the show cause notice for

enhancing the punishment as to why these findings are perverse or are without evidence.

The failure to produce the Departmental inquiry file of Shri Nair has to be seen in this context. It would have helped ascertain whether this charge sheet to Shri Nair was issued pursuant to this order. It would have also helped as to know as to whether there was any cut in pension/gratuity. These orders had to be passed by the President.

The non-furnishing of records relating to Shri Nair has to be seen in this context.

10. We are accordingly of the opinion that the revisional authority has not acted according to law. The orders of revisional authority and that of General Manager are fit to be set aside.

11. We also note that the appellate authority passed its order on 28.5.1991. The period of filing revision is 45 days. The applicant did not prefer any revision against this order. The show cause notice was issued on 2.8.91.

12. We find that the appellate authority has held the applicant guilty of a modified charge i.e. of entry into a transaction with a person whose case he was required to handle. Explanation 1 below Rule 9(25)(i) provides that a finding of having been guilty in respect of modified charges can be recorded provided the applicant had sufficient notice of it.

13. We have noted in para 2 above that the applicant did not prefer any revision against this order in the stipulated period. At the time of hearing of the earlier OA it was stated on behalf of the applicant that he will be satisfied if the

punishment imposed by the appellate authority is allowed to stand.

We also note that no assertions have been made in the present OA as to why the order passed by the appellate authority are bad except a bald statement that it is passed without any material or without application of mind.

14. In view of what has been discussed above, we quash and set aside the order of the revisional authority and the General Manager passed in appeal. The order passed by the appellate authority shall stand. The OA is disposed of with these directions. No order as to costs."

4. Being aggrieved of the above order, as stated hereinabove, the Railways preferred Special Civil Application No.21147 of 2005, whereas the petitioner preferred Special Civil Application No.13162 of 2007 contending that the order of the Tribunal is silent on the 'consequential reliefs'.

5. Learned advocate for the Railways invited attention of the Court to various aspects of the matter and vehemently assailed the order passed by the Tribunal.

6. Mr.K.K.Shah, learned advocate for the petitioner in Special Civil Application No.13162 of 2007 invited attention of the Court to paragraph No.9 of the order of the Tribunal which reads as under:

"9. We find that in the instant case the appellate authority has passed a very detailed order running into four pages. The relevant part of the order is as follows:

“10. There is frank admission of contradictions in the evidence on record of the proceedings. To opine that all the contradictions are not of serious nature will not suffice unless each of the admitted contradictions are reasoned out to draw conclusions.

“I have gone through some of the contradictions between the prosecution key witness, the complainant Shri Nair, Shri Rohatgi DVI AII (Investigating Officer”.

13. The complainant witness stated in Ans. To Q.No.32, 33, 34 that he travelled ex. ADI to BRC in 2nd A.C. Howrah Express on own privilege pass with Shri Rohatgi CVI AII alone that no writing work was done in the train from ADI to BRC. Whereas Shri Rohatgi in Ans. To Q.Nos.3, 33, 34, 35, 37, 38, 39 stated that document memorandum Part-I dt.26.1.90 was prepared in the moving train and all the persons travelled in 2nd A.C. Howrah Express. This serious contradiction has shaken the evidential value of Panchnama Memorandum Part-I.

19. During this confrontation there is no version of Shri Nair recorded in this Panchnama as having returned the delinquent employee's contention on the contrary all have signed it in token of its correctness. In view of the above this Panchnama does not prove that the payment of Rs.775/- was of bribe amount. It is certainly proved the transaction of Rs.775/- between the two. The charged employee has also admitted of the same. But as repayment of loan and not as illegal gratification.

21. The investigation even after the “trap” is too poor to bring home genuineness to old and new addresses

> with its actual distance based on which the claim of Transfer/Packing allowance is based. It has remained far behind in bringing out required evidence to the standard of proof to establish the charges.
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> 23. The charge of accepting illegal gratification for passing the Transfer/Packing allowance stands unsustained with the evidence of the prosecution witness. Complainant Shri Nair in Ans. to Q.No.41 with that of Shri Rohatgi, CVI AII An. to Q.No.30 that the authority to pass the claim rests with the APO/DPO BRC and now with the Clerk. The Duty List documentary evidence also fails the charge.
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> 24. ..... The complainant witness is not only unreliable to the tune of evidence tendered but deserves to be taken up separately for defrauding the Railways on the basis of the evidence on records of Enquiry proceedings."

7. Having considered the facts of the case and the discussion of the order of the appellate authority by the Tribunal, which is in required details we find that Special Civil Application No.21147 of 2005 is without any merit and deserves to be dismissed.

7.1 So far as petition filed by the petitioner being Special Civil Application No.13162 of 2007 is concerned, it is true that there is no specific direction about the consequential reliefs, hence the same deserves to be allowed. The Tribunal having said that, 'the order passed by the appellate authority shall stand', the Railway authority ought to have given effect to the same in letter and spirit

and should have paid all consequential benefits to the petitioner. As the appellate authority had substituted the penalty of removal to that of reduction in next lower grade of Senior Clerk scale of 1200-2040 at pay and 1660 against Rs.1750/- without future effect for two years, the authorities ought to have implemented the order passed by the Tribunal, treating the penalty imposed by the appellate authority to be the only penalty.

8. In view of the above discussion, Special Civil Application No.21147 of 2005 filed by the Union of India in the Railways Department is dismissed. Rule is discharged. No costs.

8.1 Special Civil Application No.13162 of 2007 is allowed to the extent that the Union of India and the Railways, the opponents in Original Application No.742 of 2001, shall implement order dated 08.12.2004 of the Tribunal within three months from the date of receipt of writ of this Court. Rule is made absolute to the above extent. No costs.

8.2 Direct service is permitted on respondent Nos.3 and 4 in Special Civil Application No.13162 of 2007.

(M.S.SHAH, J.)

(RAVI R.TRIPATHI, J.)

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